

1 of the Federal Government. It is the purpose of this Act to
2 provide the public with such information while protecting
3 the rights of individuals and the ability of the Government to
4 carry out its responsibilities.

5 OPEN MEETINGS

6 SEC. 3. (a) Title 5, United States Code, is amended by
7 adding after section 552a the following new section:

8 **“§ 552b. Open meetings**

9 “(a) For purposes of this section—

10 “(1) the term ‘agency’ means the Federal Election
11 Commission and any agency, as defined in section 552
12 (e) of this title, headed by a collegial body composed of
13 two or more individual members, a majority of whom
14 are appointed to such position by the President with
15 the advice and consent of the Senate, and includes any
16 subdivision thereof authorized to act on behalf of the
17 agency;

18 “(2) the term ‘meeting’ means the deliberations of
19 at least the number of individual agency members re-
20 quired to take action on behalf of the agency where such
21 deliberations concern the joint conduct or disposition of
22 agency business; and

23 “(3) the term ‘member’ means an individual who
24 belongs to a collegial body heading an agency.

25 “(b) Except as provided in subsection (c), every por-

1 tion of every meeting of an agency shall be open to public
2 observation.

3 “(c) Except in a case where the agency finds that the
4 public interest requires otherwise, subsection (b) shall
5 not apply to any portion of an agency meeting and the
6 requirements of subsections (d) and (e) shall not apply to
7 any information pertaining to such meeting otherwise re-
8 quired by this section to be disclosed to the public, where the
9 agency properly determines that such portion or portions of
10 its meeting or the disclosure of such information is likely to—

11 “(1) disclose matters (A) specifically authorized
12 under criteria established by an Executive order to be
13 kept secret in the interests of national defense or foreign
14 policy and (B) in fact properly classified pursuant to
15 such Executive order;

16 “(2) relate solely to the internal personnel rules
17 and practices of an agency;

18 “(3) disclose information required to be withheld
19 from the public by any statute establishing particular
20 criteria or referring to particular types of information;

21 “(4) disclose trade secrets and commercial or finan-
22 cial information obtained from a person and privileged or
23 confidential;

24 “(5) involve accusing any person of a crime, or
25 formally censuring any person;

1 “(6) disclose information of a personal nature
2 where disclosure would constitute a clearly unwarranted
3 invasion of personal privacy;

4 “(7) disclose investigatory records compiled for
5 law enforcement purposes, but only to the extent that
6 the production of such records would (A) interfere with
7 enforcement proceedings, (B) deprive a person of a
8 right to a fair trial or an impartial adjudication, (C)
9 constitute an unwarranted invasion of personal privacy,
10 (D) disclose the identity of a confidential source and,
11 in the case of a record compiled by a criminal law en-
12 forcement authority in the course of a criminal investi-
13 gation, or by an agency conducting a lawful national
14 security intelligence investigation, confidential informa-
15 tion furnished only by the confidential source, (E) dis-
16 close investigative techniques and procedures, or (F)
17 endanger the life or physical safety of law enforcement
18 personnel;

19 “(8) disclose information contained in or related to
20 examination, operating, or condition reports prepared
21 by, on behalf of, or for the use of an agency responsible
22 for the regulation or supervision of financial institutions;

23 “(9) disclose information the premature disclosure
24 of which would—

25 “(A) in the case of an agency which regulates

1 currencies, securities, commodities, or financial in-
2 stitutions, be likely to (i) lead to significant financial
3 speculation, or (ii) significantly endanger the sta-
4 bility of any financial institution; or

5 “(B) in the case of any agency, be likely to
6 significantly frustrate implementation of a proposed
7 agency action, except that this subparagraph shall
8 not apply in any instance where the content or na-
9 ture of the proposed agency action already has been
10 disclosed to the public by the agency, or where the
11 agency is required by law to make such disclosure
12 prior to taking final agency action on such proposal;

13 or

14 “(10) specifically concern the agency’s issuance
15 of a subpoena, or the agency’s participation in a civil
16 action, an action in a foreign court or international tri-
17 bunal, or an arbitration, or the initiation, conduct, or
18 disposition by the agency of a particular case of formal
19 agency adjudication pursuant to the procedures in section
20 554 of this title or otherwise involving a determination
21 on the record after opportunity for a hearing.

22 “(d) (1) Action under subsection (c) to close a por-
23 tion or portions of an agency meeting shall be taken only
24 when a majority of the entire membership of the agency
25 votes to take such action. A separate vote of the agency

1 members shall be taken with respect to each agency meeting
2 a portion or portions of which are proposed to be closed to
3 the public pursuant to subsection (c), or with respect to any
4 information which is proposed to be withheld under sub-
5 section (c). A single vote may be taken with respect to a
6 series of portions of meetings which are proposed to be
7 closed to the public, or with respect to any information con-
8 cerning such series, so long as each portion of a meeting
9 in such series involves the same particular matters, and is
10 scheduled to be held no more than thirty days after the
11 initial portion of a meeting in such series. The vote of each
12 agency member participating in such vote shall be recorded
13 and no proxies shall be allowed.

14 “(2) Whenever any person whose interests may be
15 directly affected by a portion of a meeting requests that the
16 agency close such portion to the public for any of the rea-
17 sons referred to in paragraph (5), (6), or (7) of subsec-
18 tion (c), the agency, upon request of any one of its members,
19 shall vote by recorded vote whether to close such meeting.

20 “(3) Within one day of any vote taken pursuant to
21 paragraph (1) or (2), the agency shall make publicly
22 available a written copy of such vote reflecting the vote of
23 each member on the question. If a portion of a meeting is
24 closed to the public, the agency shall, within one day of the
25 vote taken pursuant to paragraph (1) or (2) of this sub-

1 section, make publicly available a full written explanation
2 of its action closing the portion together with a list of all
3 persons expected to attend the meeting and their affiliation.

4 “(4) Any agency, a majority of the portions of whose
5 meetings may properly be closed to the public pursuant
6 to paragraph (4), (8), (9) (A), or (10) of subsection
7 (c), or any combination thereof, may provide by regulation
8 for the closing of such portions in the event that a majority
9 of the members of the agency votes by recorded vote at the
10 beginning of such meeting, or portion thereof, to close the
11 exempt portion or portions of the meeting, and a copy of
12 such vote, reflecting the vote of each member on the ques-
13 tion, is made available to the public. The provisions of
14 paragraphs (1), (2), and (3) of this subsection and subsec-
15 tion (e) shall not apply to any portion of a meeting to which
16 such regulations apply: *Provided*, That the agency shall,
17 except to the extent that such information is exempt from
18 disclosure under the provisions of subsection (c), provide
19 the public with public announcement of the date, place, and
20 subject matter of the meeting and each portion thereof at
21 the earliest practicable time and in no case later than the
22 commencement of the meeting or portion in question.

23 “(e) In the case of each meeting, the agency shall make
24 public announcement, at least one week before the meeting,
25 of the date, place, and subject matter of the meeting, whether

1 it is to be open or closed to the public, and the name and
2 phone number of the official designated by the agency to
3 respond to requests for information about the meeting. Such
4 announcement shall be made unless a majority of the mem-
5 bers of the agency determines by a recorded vote that agency
6 business requires that such meeting be called at an earlier
7 date, in which case the agency shall make public announce-
8 ment of the date, place, and subject matter of such meeting,
9 and whether open or closed to the public, at the earliest
10 practicable time and in no case later than the commence-
11 ment of the meeting or portion in question. The time, place,
12 or subject matter of a meeting, or the determination of the
13 agency to open or close a meeting, or portion of a meeting,
14 to the public, may be changed following the public announce-
15 ment required by this paragraph only if (1) a majority of
16 the entire membership of the agency determines by a re-
17 corded vote that agency business so requires and that no
18 earlier announcement of the change was possible, and (2)
19 the agency publicly announces such change and the vote
20 of each member upon such change at the earliest practicable
21 time and in no case later than the commencement of the
22 meeting or portion in question.

23 “(f) (1) A complete transcript or electronic recording
24 adequate to record fully the proceedings shall be made of each
25 meeting, or portion of a meeting, closed to the public, ex-

cept for a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of subsection (c). The agency shall make promptly available to the public, in a location easily accessible to the public, the complete transcript or electronic recording of the discussion at such meeting of any item on the agenda, or of the testimony of any witness received at such meeting, except for such portion or portions of such discussion or testimony as the agency, by recorded vote taken subsequent to the meeting and promptly made available to the public, determines to contain information specified in paragraphs (1) through (10) of subsection (c). In place of each portion deleted from such a transcript or transcription the agency shall supply a written explanation of the reason for the deletion, and the portion of subsection (c) and any other statute said to permit the deletion. Copies of such transcript, or a transcription of such electronic recording disclosing the identity of each speaker, shall be furnished to any person at no greater than the actual cost of duplication or transcription or, if in the public interest, at no cost. The agency shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency pro-

1 ceeding with respect to which the meeting, or a portion
2 thereof, was held, whichever occurs later.

3 “(2) Written minutes shall be made of any agency meet-
4 ing, or portion thereof, which is open to the public. The
5 agency shall make such minutes promptly available to the
6 public in a location easily accessible to the public, and shall
7 maintain such minutes for a period of at least two years after
8 such meeting. Copies of such minutes shall be furnished to
9 any person at no greater than the actual cost of duplication
10 thereof or, if in the public interest, at no cost.

11 “(g) Each agency subject to the requirements of this
12 section shall, within 180 days after the date of enactment
13 of this section, following consultation with the Office of the
14 Chairman of the Administrative Conference of the United
15 States and published notice in the Federal Register of at
16 least thirty days and opportunity for written comment by
17 any persons, promulgate regulations to implement the re-
18 quirements of subsections (b) through (f) of this section.
19 Any person may bring a proceeding in the United States
20 District Court for the District of Columbia to require an
21 agency to promulgate such regulations if such agency has
22 not promulgated such regulations within the time period
23 specified herein. Subject to any limitations of time therefor
24 provided by law, any person may bring a proceeding in
25 the United States Court of Appeals for the District of Colum-

1 bia to set aside agency regulations issued pursuant to this
2 subsection that are not in accord with the requirements of
3 subsections (b) through (f) of this section, and to require
4 the promulgation of regulations that are in accord with such
5 subsections.

6 “(h) The district courts of the United States have juris-
7 diction to enforce the requirements of subsections (b)
8 through (f) of this section. Such actions may be brought by
9 any person against an agency or its members prior to, or
10 within sixty days after, the meeting out of which the viola-
11 tion of this section arises, except that if public announce-
12 ment of such meeting is not initially provided by the
13 agency in accordance with the requirements of this section,
14 such action may be instituted pursuant to this section at any
15 time prior to sixty days after any public announcement of
16 such meeting. Such actions may be brought in the district
17 wherein the plaintiff resides, or has his principal place of
18 business, or where the agency in question has its headquar-
19 ters. In such actions a defendant shall serve his answer
20 within twenty days after the service of the complaint, but
21 such time may be extended by the court for up to twenty
22 additional days upon a showing of good cause therefor. The
23 burden is on the defendant to sustain his action. In deciding
24 such cases the court may examine in camera any portion of
25 a transcript or electronic recording of a meeting closed to the

1 public, and may take such additional evidence as it deems
2 necessary. The court, having due regard for orderly adminis-
3 tration and the public interest, as well as the interests of the
4 party, may grant such equitable relief as it deems appro-
5 priate, including granting an injunction against future viola-
6 tions of this section, or ordering the agency to make available
7 to the public such portion of the transcript or electronic
8 recording of a meeting as is not authorized to be withheld
9 under subsection (c) of this section. Except to the extent
10 provided in subsection (i) of this section, nothing in this sec-
11 tion confers jurisdiction on any district court acting solely
12 under this subsection to set aside, enjoin or invalidate any
13 agency action taken or discussed at an agency meeting out
14 of which the violation of this section arose.

15 “(i) Any Federal court otherwise authorized by law to
16 review agency action may, at the application of any person
17 properly participating in the judicial review proceeding, in-
18 quire into violations by the agency of the requirements of this
19 section and afford any such relief as it deems appropriate.

20 “(j) The court may assess against any party reasonable
21 attorney fees and other litigation costs reasonably incurred by
22 any other party who substantially prevails in any action
23 brought in accordance with the provisions of subsection (g),
24 (h), or (i) of this section, except that costs may be assessed
25 against an individual member of an agency only in the case

1 where the court finds such agency member has intentionally
2 and repeatedly violated this section and against the plaintiff
3 only where the court finds that the suit was initiated by the
4 plaintiff primarily for frivolous or dilatory purposes. In the
5 case of assessment of costs against an agency, the costs may
6 be assessed by the court against the United States.

7 “(k) Each agency subject to the requirements of this
8 section shall annually report to Congress regarding its com-
9 pliance with such requirements, including a tabulation of
10 the total number of agency meetings open to the public,
11 the total number of meetings closed to the public, the rea-
12 sons for closing such meetings, and a description of any
13 litigation brought against the agency under this section,
14 including any costs assessed against the agency in such
15 litigation (whether or not paid by the agency).

16 “(l) Except as specifically provided in this section,
17 nothing herein expands or limits the present rights of any
18 person under section 552 of this title, except that the pro-
19 visions of this Act shall govern in the case of any request
20 made pursuant to such section to copy or inspect the tran-
21 scripts or electronic recordings described in subsection (f)
22 of this section. The requirements of chapter 33 of title 44,
23 United States Code, shall not apply to the transcripts and
24 electronic recordings described in subsection (f) of this
25 section.

1 “(m) This section does not constitute authority to with-
2 hold any information from Congress, and does not authorize
3 the closing of any agency meeting or portion thereof other-
4 wise required by law to be open.

5 “(n) Nothing in this section authorizes any agency
6 to withhold from any individual any record, including tran-
7 scripts or electronic recordings required by this Act, which
8 is otherwise accessible to such individual under section 552a
9 of this title.

10 “(o) In the event that any meeting is subject to the pro-
11 visions of the Federal Advisory Committee Act as well as
12 the provisions of this section, the provisions of this section
13 shall govern.”.

14 (b) The chapter analysis of chapter 5 of title 5,
15 United States Code, is amended by inserting:

“552b. Open meetings.”

16 immediately below:

“552a. Records about individuals.”.

17 EX PARTE COMMUNICATIONS

18 SEC. 4. (a) Section 557 of title 5, United States Code,
19 is amended by adding at the end thereof the following new
20 subsection:

21 “(d) (1) In any agency proceeding which is subject to
22 subsection (a) of this section, except to the extent required
23 for the disposition of ex parte matters as authorized by law—

1 “(A) no interested person outside the agency shall
2 make or cause to be made to any member of the body
3 comprising the agency, administrative law judge, or
4 other employee who is or may reasonably be expected
5 to be involved in the decisional process of the proceed-
6 ing, an ex parte communication relative to the merits
7 of the proceeding;

8 “(B) no member of the body comprising the agen-
9 cy, administrative law judge, or other employee who
10 is or may reasonably be expected to be involved in
11 the decisional process of the proceeding, shall make or
12 cause to be made to any interested person outside the
13 agency an ex parte communication relative to the merits
14 of the proceeding;

15 “(C) a member of the body comprising the agency,
16 administrative law judge, or other employee who is or
17 may reasonably be expected to be involved in the de-
18 cisional process of such proceeding who receives, or
19 who makes or causes to be made, a communication pro-
20 hibited by this subsection shall place on the public record
21 of the proceeding:

22 “(i) all such written communications;

23 “(ii) memoranda stating the substance of all
24 such oral communications; and

25 “(iii) all written responses, and memoranda

1 stating the substance of all oral responses, to the
2 materials described in clauses (i) and (ii) of this
3 subparagraph;

4 “(D) in the event of a communication prohibited
5 by this subsection and made or caused to be made by a
6 party, the agency, administrative law judge, or other
7 employee presiding at the hearing may, to the extent
8 consistent with the interests of justice and the policy of
9 the underlying statutes, require the person or party to
10 show cause why his claim or interest in the proceeding
11 should not be dismissed, denied, disregarded, or other-
12 wise adversely affected on account of such violation;
13 and

14 “(E) the prohibitions of this subsection shall apply
15 beginning at such time as the agency may designate, but
16 in no case shall they begin to apply later than the time
17 at which a proceeding is noticed for hearing unless the
18 person responsible for the communication has knowledge
19 that it will be noticed, in which case the prohibitions
20 shall apply beginning at the time of his acquisition of
21 such knowledge.

22 “(2) This section does not constitute authority to with-
23 hold information from Congress.”.

24 (b) Section 551 of title 5, United States Code, is
25 amended—

1 (1) by striking out “and” at the end of paragraph
2 (12);

3 (2) by striking out the “act.” at the end of para-
4 graph (13) and inserting in lieu thereof “act; and”;
5 and

6 (3) by adding at the end thereof the following new
7 paragraph:

8 “(14) ‘ex parte communication’ means an oral or
9 written communication not on the public record with
10 respect to which reasonable prior notice to all parties
11 is not given.”.

(c) Section 556 (d) of title 5, United States Code, is amended by inserting between the third and fourth sentences thereof the following new sentence: “The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557 (d) of this title sufficient grounds for a decision adverse to a person or party who has committed such violation or caused such violation to occur.”

20 CONFORMING AMENDMENTS

SEC. 5. (a) Section 410(b)(1) of title 39, United States Code, is amended by inserting after “Section 552 (public information),” the words “section 552a (records about individuals), section 552b (open meetings),”.

1 (b) Section 552 (b) (3) of title 5, United States Code,
2 is amended to read as follows:

3 “(3) required to be withheld from the public by
4 any statute establishing particular criteria or referring
5 to particular types of information;”.

6 EFFECTIVE DATE

7 SEC. 6. (a) Except as provided in subsection (b) of
8 this section, the provisions of this Act shall take effect one
9 hundred and eighty days after the date of its enactment.

10 (b) Subsection (g) of section 552b of title 5, United
11 States Code, as added by section 3 (a) of this Act, shall take
12 effect upon enactment.

A BILL

To provide that meetings of Government agencies shall be open to the public, and for other purposes.

By Mrs. ABZUG, Mr. FASCELL, Mr. BROOKS, Mr. MOSS, Mr. MACDONALD of Massachusetts, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. WRIGHT, Mr. FUQUA, Mr. CONYERS, Mr. JAMES V. STANTON, Ms. COLLINS of Illinois, Mr. JOHN L. BURTON, Mr. HARRINGTON, Mr. DRINAN, Mr. MEZVINSKY, Ms. JORDAN, Mr. EVANS of Indiana, Mr. MOFFETT, Mr. MAGUIRE, Mr. ASPIN, Mr. GUDE, Mr. McCLOSKEY, Mr. STEELMAN, and Mr. PRITCHARD

FEBRUARY 3, 1976

Referred to the Committee on Government Operations